



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2013-0180, FRL-9830-7]

Approval and Promulgation of Implementation Plans;
New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of oxides of nitrogen.

The SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 200, “General Provisions,” Part 212, “General Process Emission Sources,” Part 220, “Portland Cement Plants and Glass Plants,” and Subpart 227-2, “Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NOx).” The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: This rule will be effective [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2013-0180. All documents in the docket are listed on the www.regulations.gov web site.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

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I. What was included in New York's submittals?

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP, which included State adopted revisions to four regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 200, "General Provisions," Part 212, "General Process Emission Sources," Part 220, "Portland Cement Plants and Glass Plants," and Part 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO_x)," with effective dates of January 1, 2011, September 30, 2010, July 11, 2010 and July 8, 2010, respectively.

II. What Comments Did EPA Receive in Response to its Proposal?

On April 10, 2013 (78 FR 21302), EPA proposed to approve New York's revised Parts 200, 212, 220 and 227-2. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking action.

In response to EPA's April 10, 2013 proposed rulemaking action, EPA received no public comments.

III. What is EPA's Evaluation of Part 212, "General Process Emission Sources"?

The NYSDEC revised 6 NYCRR Part 212, by adding section 212.12, “Hot mix asphalt production plants,” to include control requirements for hot mix asphalt production plants. These control requirements will be specifically aimed at reducing NO_x emissions resulting from combustion during the aggregate drying and heating process.

With the exception of section 212.12, NO_x RACT requirements under Part 212 affect only major facilities. Major facilities or major sources are those that have a potential to emit NO_x emissions in excess of 100 tons/yr (upstate) and 25 tons/yr (downstate or in the New York Metropolitan Area). Most, if not all, hot mix asphalt plants in New York State are minor sources. These new requirements will therefore be targeted primarily at minor sources. On February 28, 2013, New York submitted a letter to EPA certifying that there are no “major source” asphalt production plants located in New York State.

Part 212 contains the required elements for a federally enforceable rule: emission control requirements, compliance procedures and test methods, compliance dates and record keeping provisions. Therefore, EPA is approving the revisions to Part 212.

IV. What is EPA’s Evaluation of Part 220, “Portland Cement Plants and Glass Plants”?

The NYSDEC revised 6 NYCRR Part 220, which is divided into two subparts: 220-1 for portland cement plants; and 220-2 for glass manufacturing plants. In addition to other requirements, the existing regulation imposed RACT requirements on NO_x emissions from portland cement kilns. The NYSDEC revised Part 220 to require updated NO_x RACT for cement kilns at portland cement plants, and to require NO_x RACT for glass furnaces at glass plants. The

revisions will apply statewide to major facilities only. Major facilities are those that have a potential to emit NO_x emissions that exceed 100 tons/yr (upstate) and 25 tons/yr (downstate).

The NYSDEC is taking a RACT approach that requires a facility specific analysis. The plant owner or operator will be required to perform a facility specific RACT analysis for emissions of NO_x that includes proposed NO_x RACT emission limit(s), identifies the procedures and monitoring equipment to be used to demonstrate compliance with the proposed NO_x RACT emission limit(s), and includes a schedule for equipment installation. The RACT analysis will be submitted to the NYSDEC for review and approval and subsequently submitted to EPA as a proposed revision to the SIP.

Subpart 220-1 Portland Cement Plants

It is EPA's understanding that there are three portland cement plants located in New York State that are subject to the RACT provisions of subpart 220-1 (Holcim, Lafarge and Lehigh). These three facilities are also subject to New York's regional haze plan's best available retrofit technologies (BART) provisions pursuant to 6 NYCRR Part 249.

On August 28, 2012 (77 FR 51915), EPA approved the BART determinations for the three portland cement plants pursuant to Part 249. Although EPA believes that the BART determinations approved for these facilities would also constitute RACT, New York is obligated to perform RACT evaluations and submit the RACT determinations to EPA as SIP revisions in order to satisfy the subpart 220-1.6(b)(4) RACT requirement and sections 172(c)(1) and 182(b)

of the Clean Air Act (Act). In a letter dated February 28, 2013 to EPA, New York commits to submit the applicable single source NO_x RACT determinations to EPA by December 1, 2013.

EPA evaluated the provisions of subpart 220-1 for consistency with the Act, EPA regulations, and EPA policy, and is conditionally approving them based on New York submitting the individual single source RACT determinations to EPA by December 1, 2013.

Subpart 220-2 Glass Plants

It is EPA's understanding that there are four glass plants located in New York State. Subpart 220-2 does not identify a specific control strategy or emission limit as RACT for these facilities and requires individual source specific RACT determinations. To date, EPA has not received any of those source specific RACT determinations. However, in a letter dated February 28, 2013 to EPA, New York commits to submit the applicable single source NO_x RACT determinations to EPA by December 1, 2013.

EPA evaluated the provisions of subpart 220-2 for consistency with the Act, EPA regulations, and EPA policy, and is conditionally approving them based on New York submitting the individual single source RACT determinations to EPA by December 1, 2013.

V. What is EPA's Evaluation of Part 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO_x)"?

New York adopted revisions to Subpart 227-2 for the purpose of imposing more stringent emission limits on major stationary sources of NO_x that contribute to local and regional

nonattainment of the 1997 and 2008 ozone standards. The revisions to Subpart 227-2 essentially entail increasing the stringency of emissions limits for six of the source categories and lowering of the size thresholds for two categories of sources. There are also two revisions that will allow subject sources increased flexibility in achieving compliance – one allows different owners to engage in a systems averaging plan and the second allows a permanent shutdown by a date certain as a compliance option.

Regarding the systems averaging plan, EPA has not classified any 8-hour ozone nonattainment areas in New York as “severe.” However, EPA classified the New York City Metropolitan area (NYMA) as severe nonattainment for the 1-hour standard. Although EPA revoked the 1-hour standard, the “severe” classification for the NYMA 1-hour area was retained to maintain consistency with existing SIP-approved regulations and the “anti-backsliding” provisions of the Act. The counties affected by the 1-hour “severe” classification are the same counties defined by EPA for New York's marginal 2008 8-hour ozone nonattainment area for the NYMA and include the same counties now being maintained for the 1997 8-hour moderate ozone NYMA. As discussed in the April 10, 2013 proposed rule, since New York avoids potential confusion by defining the affected counties in the “severe nonattainment area,” this is acceptable to EPA.

Therefore, since the NYMA is the only area designated as severe for ozone, sources in the NYMA cannot average with sources outside the NYMA.

EPA believes that the new presumptive emission limits and other control requirements will result in additional NO_x reductions throughout the State thereby strengthening New York's ozone SIP

and will help the State attain and maintain the 1997 ozone standard and help achieve attainment of the 2008 8-hour ozone standard. In addition, New York's revised system averaging plan is acceptable to EPA as it is enforceable through federally enforceable Title V operating permits and it reflects current situations where there could be multiple ownership of a particular facility.

EPA evaluated the provisions of Part 227-2 for consistency with the Act, EPA regulations, and EPA policy and is approving them.

VI. What Other Revisions Did New York Make?

New York also made administrative changes to Part 200, "General Provisions" which reflect implementation of the Part 212, 220 and 227-2 provisions. The Part 200 revisions also reflect implementation of provisions for three previously approved New York regulations, Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," Part 234, "Graphic Arts," and Part 241, "Asphalt Pavement and Asphalt Based Surface Coating," (see 77 FR 13974). It is important to note that EPA is approving only those revisions made to Part 200, specifically sections 200.1 and 200.9, as effective January 1, 2011.

VII. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA is approving revisions made to 6 NYCRR Part 200, "General Provisions," Part 212, "General Process Emission Sources," Part 220, "Portland Cement Plants and Glass Plants," and Part 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NOx)" with effective dates of January 1, 2011, September 30,

2010, July 11, 2010 and July 8, 2010, respectively, as meeting the SIP requirements of the Act. EPA is: approving sections 200.1 and 200.9; approving Part 212; conditionally approving Part 220 based on New York's commitment to submit the individual RACT determinations to EPA as SIP revisions by December 1, 2013; and, approving Part 227-2. These revisions meet the requirements of the Act and EPA's regulations, and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA's regulations.

EPA is conditionally approving New York's proposed revisions to 6 NYCRR Part 220 based on New York's February 28, 2013 letter, committing to submit the applicable NO_x RACT single source SIPs by December 1, 2013.

EPA is also correcting a typographical error to table (c), "EPA approved regulations" in 40 CFR 52.1670 for the Part 241, "Asphalt Pavement and Asphalt Based Surface Coating" entry which EPA approved on March 8, 2012 (77 FR 13974).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 27, 2013

Judith A. Enck,
Regional Administrator
Region 2

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart HH - New York

2. In 52.1670, the table in paragraph (c) is amended under Title 6 by:

- a. Revising the entry for Part 200, Section 200.1;
- b. Removing the entry for Sections 200.6, 200.7 and 200.9, and adding in its place an entry for Sections 200.6 and 200.7, and an entry for Section 200.9;
- c. Revising the entries for Parts 212, 220, Subpart 227-2 and Part 241 to read as follows:

52.1670 Identification of plan.

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(c) * * *

EPA - Approved New York State Regulations and Laws

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
Part 200, General Provisions Section 200.1	1/1/11	[Insert Federal Register publication date][Insert page number where the document begins]	The word odor is removed from the Subpart 200.1(d) definition of “air contaminant or air pollutant.”
			Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.
			Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.
			EPA is including the definition of “Federally enforceable” with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as Federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to “avoid” applicable requirements.
Sections 200.6 and 200.7	2/25/00	4/22/08, 73 FR 21548	
Section 200.9	1/1/11	[Insert Federal Register publication date][Insert page number where the document begins]	EPA is approving reference documents that are not already Federally enforceable.

Part 212, General Process Emission Sources	9/30/10	[Insert Federal Register publication date][Insert page number where the	SIP revisions submitted in accordance with § 212.10(c)(3) and 212.12(c) are effective only if approved by EPA.

		document begins]	
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Part 220, Portland Cement Plants and Glass Plants	7/11/10	[Insert Federal Register publication date][Insert page number where the document begins]	SIP revisions submitted in accordance with § 220- 1.6(b)(4) and 220-2.3(a)(4) are effective only if approved by EPA.
* * * * *			
Subpart 227-2, Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NOx)	7/8/10	[Insert Federal Register publication date][Insert page number where the document begins]	SIP revisions submitted in accordance with § 227-2.3(c) are effective only if approved by EPA.
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Part 241, Asphalt Pavement and Asphalt Based Surface Coating	1/1/11	3/8/12, 77 FR 13974	
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[FR Doc. 2013-16493 Filed 07/11/2013 at 8:45 am; Publication Date: 07/12/2013]